

**CERTIFIED FOR PUBLICATION**  
**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**  
**FIRST APPELLATE DISTRICT**  
**DIVISION TWO**

**BERKELEY KEEP JETS OVER THE  
BAY COMMITTEE,**

**Petitioner and Appellant,**

**v.**

**BOARD OF PORT COMMISSIONERS,**

**Defendant and Appellant.**

**A086708**

**(Alameda County  
Super. Ct. No. 793028-7)**

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**CITY OF SAN LEANDRO et al.,**

**Plaintiffs,**

**v.**

**BOARD OF PORT COMMISSIONERS,**

**Defendant.**

**A087959**

**(Alameda County  
Super. Ct. No. 793033-9)**

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**CITY OF ALAMEDA et al.,**

**Plaintiffs and Appellants,**

**v.**

**BOARD OF PORT COMMISSIONERS,**

**Defendant and Appellant.**

**A089660**

**(Alameda County  
Super. Ct. No. 793056-0)**

**ORDER MODIFYING OPINION AND DENYING REHEARING**  
**[NO CHANGE IN JUDGMENT]**

**THE COURT:**

It is ordered that the opinion filed on August 30, 2001, be modified as follows:

1. On page 2, in the third paragraph of the typed opinion, following the words, “from the project, a new” insert the word “supplemental” before the words, “EIR must be prepared,” so that the line now reads:

from the project, a new supplemental EIR must be prepared

2. On page 20, in the first full paragraph in the typed opinion, following the words, “submitted to the Port” insert the words, “Commissioners” before the words, “*prior* to certification of the final EIR.” The line now reads:

submitted to the Port Commissioners *prior* to certification of the final EIR

3. On page 22, strike the second full paragraph of the typed opinion, from “After the draft EIR was issued” through “You can’t argue that it cannot be done.’ ”

4. On page 23, in the second full paragraph of the typed opinion, insert the words, “At the public hearing prior to certification of the final EIR,” before the words, “The Port was also provided,” so that the line now reads:

At the public hearing prior to the certification of the final EIR, the Port was also provided

5. On page 24, delete the entire first sentence of the first full paragraph of the typed opinion, from “The Port’s response to this onslaught of technical data” through “position taken in the draft EIR. The . . .” Replace the stricken language with the following words “While comments on the draft EIR should have alerted the Port to a need to consult with or, at a minimum, confirm its views with pertinent public agencies, the” so that the line now reads:

While comments on the draft EIR should have alerted the Port to a need to consult with or, at a minimum, confirm its views with pertinent public agencies, the text of the final EIR contains

6. On page 24, in the ninth sentence of the first full paragraph of the typed opinion, delete “1977” and replace it with “1997”, so that the line now reads:

released to the public in April 1997, which states

7. On page 24, insert the following full paragraph, with a new footnote number 14 at the end of the new paragraph. The new paragraph and footnote will be inserted between the first full paragraph of the typed opinion ending with “approved methodology for considering these pollutants.’ ” and the second full paragraph beginning with “The Port has not cited us to any . . .” This change will require renumbering all of the remaining footnotes. The new paragraph and footnote read:

The Port also relied on a letter from BAAQMD, which was received during the early scoping stage before the draft EIR was released for public comment (Guidelines, §§ 15082-15083) which did not take issue with the Port’s characterization of the impact from TAC emissions as “unknown.” However, the manager of the BAAQMD’s Air Toxic Evaluation Section, Brian Bateman, was contacted by petitioners and was quoted as stating that the significance criteria in the BAAQMD CEQA Guidelines and the California Air Pollution Control Officers’ Association (CAPCOA) Risk Assessment Guidelines apply to mobile sources. In a document submitted at the public hearing before the final EIR was certified, he was quoted as stating, ‘these guidelines are generally applicable to

any source, but special considerations in the area of dispersion modeling apply to mobile sources.’” Mr. Bateman further indicated “that the CAPCOA guidelines are applicable to airports and that it is technically feasible to perform a health risk assessment for an airport. He stated that the preparation of risk assessment for an airport ‘is certainly a doable exercise from a technical standpoint. You can’t argue that it cannot be done.’ ”[fn. 14]

Footnote 14. On rehearing, the Port contends that this document, as well as the other documents received at the public hearing on the certification of the final EIR, was submitted too late in the environmental review process to be considered. However, it has been held that objections are timely raised *anytime* before certification of the final EIR. (*Galante Vineyards v. Monterey Peninsula Water Management Dist.*, *supra*, 60 Cal.App.4th at pp. 1119-1121 [petitioners could maintain action despite their failure to participate in public comment period for second supplemental draft environmental impact report because they raised concerns before certification of final EIR].) In any event, in our case, the material submitted during the public hearing on the certification of the final EIR only supplemented comments already made on the draft EIR and did not raise any new issues.

8. On page 29, in the eighth sentence of the second full paragraph of the typed opinion, delete “65” and replace it with “66.5”, so that the line now reads:

2) caused the noise levels in an area to exceed 66.5 CNEL . . .

9. On page 57, in the first full paragraph after “DISPOSITION”, insert the following after the last sentence ending with: “court issue a new writ of mandate consistent with this opinion.”

Such order shall include only those mandates necessary to achieve compliance with CEQA in accordance with this opinion. Pursuant to section 21168.9, subdivision (b), the court shall determine whether portions of the ADP are severable and may proceed pending the additional environmental review required pursuant to the court’s mandate.

This modification clarifies but does not effect a change in the judgment.

The petition for rehearing is denied.

Dated: \_\_\_\_\_  
Kline, P.J.